



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 21 2006

CERTIFIED MAIL NO. 7000 0520 0021 6108 1551
RETURN RECEIPT REQUESTED

June 20, 2006

Donald L. Shalmy
President, Nevada Power Company
6226 W. Sahara Ave.
Las Vegas, NV 89146

Dear Mr. Shalmy:

Enclosed is a copy of a Finding and Notice of Violation ("FNOV") that the United States Environmental Protection Agency ("EPA") is issuing to Nevada Power Company pursuant to Section 113 (a) of the Clean Air (the "Act"), 42 U.S.C. § 7413 (a). The FNOV is intended to notify NPC of EPA's finding that NPC has been and is in violation of the Act and the federally approved and federally enforceable Nevada State Implementation Plan ("SIP") at the Reid Gardner Generating Station located near Moapa, Nevada (the "facility").

You should be aware that Section 113(a) of the Act provides that 30 days after the issuance of the FNOV, EPA may issue an Order requiring compliance with the requirements of the SIP, issue an Order assessing a civil administrative penalty, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, Section 113(c) of the Act provides for criminal penalties in certain cases.

Upon a finding of adequate evidence of a continuing violation, EPA may place the Reid Gardner Generating Station on the List of Violating Facilities. See Section 306 of the Act and the regulations promulgated in 40 C.F.R. Part 32. Such facility would be declared ineligible for participation in any federal contract, grant, loan, or subagreement thereunder.

If you wish to discuss the FNOV, you may request a conference with EPA. The conference will afford NPC an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Mr. Donald L. Shalmy
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Please contact Allan Zabel, Office of Regional Counsel, at (415) 972-3902, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 business days after receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jordan', is written over the typed name.

Deborah Jordan
Director, Air Division

Enclosure

cc: Michael Elges, NDEP

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

3 In the Matter of:)

4 Nevada Power Company Inc.)

5 Proceeding under Section 113(a)
6 of the Clean Air Act,)

6 42 U.S.C. § 9613(a))

Docket No. R9-06-10
FINDING AND
NOTICE OF VIOLATION

7
8 STATUTORY AND REGULATORY AUTHORITY

9 1. This Finding and Notice of Violation ("FNOV") is issued
10 to the Nevada Power Company ("NPC") for violations of the Clean
11 Air Act (the "Act") at NPC's Reid Gardner Generating Station
12 ("Reid Gardner") located near Moapa, Nevada.

13 2. The Administrator of the Environmental Protection
14 Agency ("EPA"), pursuant to authority under Section 109 of the
15 Act, 42 U.S.C. § 7409, promulgated National Ambient Air Quality
16 Standards ("NAAQS") for certain criteria pollutants, including
17 PM₁₀ and particulate matter. 40 C.F.R. §§ 50.7 and 50.8.

18 3. Pursuant to Section 107(d) of the Act, 42 U.S.C.
19 § 7407(d), the Administrator promulgated lists of attainment
20 status designations for each air quality control region ("AQCR")
21 in every State. These lists identify the attainment status of
22 each AQCR for each of the criteria pollutants. The PM₁₀ and
23 particulate matter attainment status designations for the Nevada
24 AQCRs are listed at 40 C.F.R. § 81.329.

25 4. The Nevada Division of Environmental Protection
26 ("NDEP") has primary jurisdiction over certain sources in the
27 Clark County area, including Reid Gardner.

28 5. Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2),

1 requires, among other things, that each state implementation plan
2 ("SIP") ensure that the NAAQS are achieved and maintained.

3 6. To attain and maintain the NAAQS for particulate
4 matter, and later for PM₁₀, Nevada promulgated, and submitted to
5 EPA for incorporation into the SIP, Article 4 of the Air Quality
6 Implementation Plan ("Article 4"). Article 4 prohibited an owner
7 or operator of any stationary source from emitting air pollutants
8 with an opacity equal to or greater than 20 percent for more than
9 3 minutes in any 1 hour. Article 4 was part of the federally
10 approved and enforceable SIP pursuant to 42 U.S.C. § 7410. See
11 38 Fed. Reg. 34,020 (December 10, 1973).

12 7. In 1984, Article 4 was renumbered in the Nevada SIP as
13 NDEP Rule 445.721 (Maximum opacity of emissions) pursuant to 42
14 U.S.C. § 7410. See 49 Fed. Reg. 11,626 (March 27, 1984). Rule
15 445.721 remains part of the federally approved and enforceable
16 SIP.

17 8. The Nevada SIP also includes: NDEP Rule 445.734
18 (Fugitive dust), NDEP Rule 445.667 (Excess emissions: scheduled
19 maintenance: testing: malfunctions), and NDEP Rule 445.692
20 (Monitoring systems: records: reports). See 49 Fed. Reg. 11,626
21 (March 27, 1984).

22 9. In 1977, EPA first promulgated Standards for
23 Performance for Coal Preparation Plants at 40 C.F.R. §60.250 et.
24 seq. ("NSPS Subpart Y"). See 42 Fed. Reg. 37938 (July 25, 1977).
25 NSPS Subpart Y applies to the coal unloading, storage, and
26 conveying system at Reid Gardner. NSPS Subpart Y has been most
27 recently amended in 2000. See 65 Fed. Reg. 62757 (October 17,
28 2000).

1 10. Title V of the Act requires major stationary sources of
2 air pollution to obtain an operating permit that includes
3 emissions limitations and such other conditions as necessary to
4 assure compliance with applicable requirements of the Act. See
5 42 U.S.C. §§ 7661a-7661f.

6 11. On November 30, 2001, pursuant to 40 C.F.R. Part 70,
7 EPA granted final approval of NDEP's Title V program. 66 Fed.
8 Reg. 63188 (December 5, 2001). Title V permits issued under an
9 approved program are federally enforceable.

10 12. On April 22, 2004, NDEP issued Title V permit NO.
11 AP4911-0897 ("Title V Permit") to NPC for Reid Gardner. In
12 addition to the emissions limitation in Rule 445.721, the Title V
13 Permit contains numerous sampling, testing, monitoring, record-
14 keeping, and reporting ("STMRR") requirements for Reid Gardner.

15 NDEP'S NOTICES OF ALLEGED VIOLATIONS

16 13. On December 2, 2004, and July 19, 2005, NDEP issued a
17 total of 56 Notices of Alleged Violations ("NOAVs") to NPC
18 regarding Reid Gardner. These NOAVs allege that NPC violated the
19 SIP, its Title V Permit, and NSPS Subpart Y at Reid Gardner.
20 These alleged violations include opacity of emissions, excess
21 sulfur dioxide and sulfur emissions, fugitive dust, and STMRR
22 requirements. These NOAVs are identified as numbers 1862 to 1907
23 and 1942 to 1951.

24 EPA INFORMATION REQUEST

25 14. On July 18, 2005, EPA issued an information request to
26 NPC regarding the violations alleged in NDEP's NOAVs. In
27 September 2005, NPC responded by providing several boxes of
28 documents to EPA. The documents in NPC's response supported the

1 allegations made in the NOAVs, showed that NPC also violated
2 requirements of the SIP, and showed that these violations had
3 occurred for several years prior to the time period covered by
4 the NOAVs.

5 FINDINGS OF FACT

6 15. NPC generates electricity at Reid Gardner using four
7 coal-fired boilers with steam turbines and other associated
8 equipment.

9 16. On numerous occasions, NPC has failed to comply with
10 the maximum opacity of emissions allowed by Rule 445.721 and its
11 Title V Permit. See, e.g., NOAV #1944.

12 17. On numerous occasions, NPC has failed to comply with
13 various STMRR requirements, as set forth in the SIP and its Title
14 V Permit, associated with the maximum opacity of emissions
15 allowed by Rule 445.721 and its Title V Permit. See, e.g., NOAVs
16 ##1945, 1946, 1947, and 1948.

17 18. On numerous occasions, NPC has failed to comply with
18 the maximum operating heat input rate allowed by its Title V
19 Permit while combusting coal or while co-firing coal and fuel
20 oil. See, e.g., NOAV #1942.

21 19. On numerous occasions, NPC has failed to comply with
22 various STMRR requirements, as set forth in its Title V Permit,
23 regarding the maximum operating heat input rate allowed by its
24 Title V Permit while combusting coal or while co-firing coal and
25 fuel oil. See, e.g., NOAVs ##1863, 1868, 1870, 1872, 1874, 1876,
26 1878, 1902, 1904, and 1943.

27 20. On numerous occasions, NPC has failed to comply with
28 various STMRR requirements, as set forth in its Title V Permit

1 and NSPS Subpart Y, associated with the operation of its coal
2 silos, coal unloading stations, and coal conveying equipment.
3 See, e.g., NOAVs ##1888, 1889, 1890, 1891, 1892, 1893, and 1894.

4 21. On numerous occasions, NPC has failed to comply with
5 various STMRR requirements, as set forth in its Title V Permit,
6 associated with the operation of its fly ash silos. See, e.g.,
7 NOAVs ##1895, 1896, 1897, and 1898.

8 22. On numerous occasions, NPC has failed to comply with
9 various STMRR requirements, as set forth in its Title V Permit,
10 associated with the combustion of fuel oil. See, e.g., NOAVs
11 ##1864, 1869, 1873, 1877, 1903, and 1904.

12 23. On numerous occasions, NPC has failed to comply with
13 various STMRR requirements, as set forth in its Title V Permit
14 and NSPS Subpart Y, associated with its coal unloading and
15 conveying operations. See, e.g., NOAVs ##1881, 1882, 1883, 1884,
16 1885, 1886, and 1887.

17 24. On numerous occasions, NPC has failed to properly
18 sample and test coal prior to its combustion in any boiler, as
19 required by its Title V Permit. See, e.g., NOAVs ##1862, 1867,
20 1871, 1875, 1902, 1903, and 1904.

21 25. NPC failed to timely install and operate a coal mass
22 measurement system, as required by its Title V Permit. See,
23 e.g., NOAV #1866.

24 26. On numerous occasions, NPC has failed to comply with
25 various STMRR requirements, as set forth in its Title V Permit,
26 associated with the operation of its lime storage silos. See,
27 e.g., NOAV #1866.

28 27. On numerous occasions, NPC has failed to comply with

1 various STMRR requirements, as set forth in its Title V Permit,
2 associated with the operation of its cooling towers. See, e.g.,
3 NOAVs ##1879, 1880, and 1905.

4 28. On numerous occasions, NPC has failed to comply with
5 various STMRR requirements, as set forth in its Title V Permit,
6 associated with the currently in-use operating scenario and
7 changing between operating scenarios. See, e.g., NOAVs ##1865,
8 1870, 1874, and 1878.

9 29. On numerous occasions, NPC has failed to comply with
10 the maximum emission rates for sulfur dioxide and sulfur allowed
11 by its Title V Permit. See, e.g., NOAV #1949.

12 30. On numerous occasions, NPC has failed to comply with
13 various STMRR requirements, as set forth in the SIP and its Title
14 V Permit, associated with the maximum emission rates for sulfur
15 dioxide and sulfur allowed by its Title V Permit. See, e.g.,
16 NOAVs ##1949, 1950, and 1951.

17 31. On numerous occasions, NPC has failed to comply with
18 the general requirement of the SIP and its Title V Permit to keep
19 controllable particulate matter from becoming airborne. See,
20 e.g., NOAV #1907.

21 32. On numerous occasions, NPC has failed to comply with
22 the general requirements of its Title V Permit to report all
23 deviations from the requirements of the Title V Permit, and to
24 record all monitoring information required by the Title V Permit.
25 See, e.g., NOAVs ## 1901 and 1906.

26 FINDING OF VIOLATIONS

27 33. NPC has violated the Act by failing to comply with the
28 maximum opacity of emissions allowed by Rule 445.721 and its

1 Title V Permit.

2 34. NPC has violated the Act by failing to comply with
3 various STMRR requirements, as set forth in its Title V Permit,
4 associated with the maximum opacity of emissions allowed by Rule
5 445.721 and its Title V Permit.

6 35. NPC has violated the Act by failing to comply with the
7 maximum operating heat input rate allowed by its Title V Permit
8 while combusting coal or while co-firing coal and fuel oil.

9 36. NPC has violated the Act by failing to comply with
10 various STMRR requirements, as set forth in its Title V Permit,
11 associated with the maximum operating heat input rate allowed by
12 its Title V Permit while combusting coal or while co-firing coal
13 and fuel oil.

14 37. NPC has violated the Act by failing to comply with
15 various STMRR requirements, as set forth in its Title V Permit
16 and NSPS Subpart Y, associated with the operation of its coal
17 silos.

18 38. NPC has violated the Act by failing to comply with
19 various STMRR requirements, as set forth in its Title V Permit,
20 associated with the operation of its fly ash silos.

21 39. NPC has violated the Act by failing to comply with
22 various STMRR requirements, as set forth in its Title V Permit,
23 associated with the combustion of fuel oil.

24 40. NPC has violated the Act by failing to comply with
25 various STMRR requirements, as set forth in its Title V Permit
26 and NSPS Subpart Y, associated with its coal unloading and
27 conveying operations.

28 41. NPC has violated the Act by failing to properly sample

1 and test coal prior to its combustion in any boiler, as required
2 by its Title V Permit.

3 42. NPC has violated the Act by failing to timely install
4 and operate a coal mass measurement system, as required by its
5 Title V Permit.

6 43. NPC has violated the Act by failing to comply with
7 various STMRR requirements, as set forth in its Title V Permit,
8 associated with the operation of its lime storage silos.

9 44. NPC has violated the Act by failing to comply with
10 various STMRR requirements, as set forth in its Title V Permit,
11 associated with the operation of its cooling towers.

12 45. NPC has violated the Act by failing to comply with
13 various STMRR requirements, as set forth in its Title V Permit,
14 associated with the currently in-use operating scenario and
15 changing between operating scenarios.

16 46. NPC has violated the Act by failing to comply with the
17 maximum emission rates for sulfur dioxide and sulfur allowed by
18 its Title V Permit.

19 47. NPC has violated the Act by failing to comply with
20 various STMRR requirements, as set forth in its Title V Permit,
21 associated with the maximum emission rates for sulfur dioxide and
22 sulfur allowed by its Title V Permit.

23 48. NPC has violated the Act by failing to keep
24 controllable particulate from becoming airborne, as required by
25 its Title V Permit.

26 49. NPC has violated the Act by failing to report all
27 deviations from the requirements of the Title V Permit, and to
28 record all monitoring information required by the Title V Permit.

ENFORCEMENT

50. Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this FNOV, EPA may, without regard to the period of violation:

- issue an order requiring compliance with the requirements of the SIP or permit, or
- issue an administrative penalty order pursuant to Section 113(d) of the Act for civil administrative penalties of up to \$32,500 per day of violation, or
- bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation.

42 U.S.C. § 7413(a)(1), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, & 40 C.F.R. § 19. Furthermore, for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of the issuance of an FNOV, Section 113(c) of the Act provides for criminal penalties, imprisonment, or both. 42 U.S.C. § 7413(c)(3).

In addition, under Section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the Reid Gardner being declared ineligible for participation in any federal contract, grant, or loan.

1 PENALTY ASSESSMENT CRITERIA

2 51. Section 113(e) (1) of the Act states that the
3 Administrator or a court, as appropriate, shall, in determining
4 the amount of any penalty to be assessed, take into consideration
5 (in addition to such other factors as justice may require) the
6 size of the business, the economic impact of the penalty of the
7 business, the violator's full compliance history and good faith
8 efforts to comply, the duration of the violation as established
9 by any credible evidence (including evidence other than the
10 applicable test method), payment by the violator of penalties
11 previously assessed for the same violation, the economic benefit
12 of noncompliance, and the seriousness of the violation. 42
13 U.S.C. § 7413(e) (1).

14 Section 113(e) (2) of the Act allows the Administrator or a
15 court to assess a penalty for each day of violation. 42 U.S.C.
16 § 7413(e) (2). For the purpose of determining the number of days
17 of violation, where EPA makes a prima facie showing that the
18 conduct or events giving rise to a violation are likely to have
19 continued or recurred past the date of the issuance of an FNOV,
20 EPA shall presume the days of violation to include the date of
21 issuance of the FNOV and each and every day thereafter until the
22 violator establishes that continuous compliance has been
23 achieved, except to the extent that the violator can prove by a
24 preponderance of the evidence that there were intervening days
25 during which no violation occurred or that the violation was not
26 continuing in nature.

27 OPPORTUNITY FOR CONFERENCE


28 52. NPC may, upon request, arrange to have a conference

1 with EPA to discuss this matter. A conference would enable NPC
2 to present evidence bearing on the finding of violations, the
3 nature of the violations, and any efforts that it may have taken
4 or proposes to take to achieve compliance. If NPC wishes to take
5 advantage of this opportunity, it must make a request for a
6 conference within ten (10) days of receipt of this FNOV. NPC, if
7 it chooses to request a conference, may choose to be represented
8 by counsel at the conference. Any request for a conference or
9 other inquiries concerning this FNOV should be made in writing
10 to:

11 Allan Zabel
12 Office of Regional Counsel
13 U.S. Environmental Protection Agency, Region 9
14 75 Hawthorne Street (ORC-2)
15 San Francisco, CA 94105
16 (415) 972-3902

17 Date

6/20/06


18 Deborah Jordan
19 Director, Air Division
20 EPA Region 9
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